



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2022-0412; FRL-9818-02-R9]

#### **Determinations of Attainment by the Attainment Date, California Areas Classified as Serious for the 2008 Ozone National Ambient Air Quality Standards and Marginal for the 2015 Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing a determination that the Nevada County (Western part) and Ventura County areas in California, both classified as Serious for the 2008 ozone National Ambient Air Quality Standards (NAAQS), attained the 2008 ozone NAAQS by the July 20, 2021 attainment date. The EPA is also finalizing a determination that six areas in California classified as Marginal for the 2015 ozone NAAQS, attained the 2015 ozone NAAQS by the August 3, 2021 attainment date. These six areas are: Butte County, Calaveras County, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes. Our final determination of attainment is based on the exclusion of exceedances of the 2008 and 2015 ozone NAAQS that occurred on multiple days in 2018 and 2020, because the exceedances were due to exceptional events. We are also finalizing our determination that the requirement for the State to have contingency measures for Reasonable Further Progress (RFP) and attainment for the 2008 ozone NAAQS for the Nevada County (Western part) and Ventura nonattainment areas will no longer apply, because the contingency measures will never be needed given the attainment of the NAAQS by the attainment date. This action fulfills the EPA's statutory obligation to determine whether these ozone nonattainment areas attained the NAAQS by the relevant attainment dates.

**DATES:** The effective date of this rule is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-EPA-R09-OAR-2022-0412. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Laura Lawrence, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; By phone: (415) 972-3407 or by email: [lawrence.laura@epa.gov](mailto:lawrence.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document “we,” “us,” or “our” means the EPA.

## **Table of Contents**

- I. Summary of the Proposed Action
- II. Public Comment Period and Final Action
- III. Summary of Final Action
- IV. Statutory and Executive Order Reviews

### **I. Summary of the Proposed Action**

On July 14, 2022,<sup>1</sup> the EPA proposed to determine that two areas classified as Serious nonattainment for the 2008 ozone National Ambient Air Quality Standards (NAAQS or “standards”) attained the standards by their July 21, 2021 attainment date, and that six areas classified as Marginal for the 2015 ozone standards attained the standards by their August 3, 2021 attainment date.<sup>2</sup> The EPA proposed these findings to fulfill our statutory obligation under

---

<sup>1</sup> 87 FR 42126 (July 14, 2022).

<sup>2</sup> The 2008 and 2015 ozone NAAQS are both 8-hour standards; the 2008 ozone NAAQS was set at a level of 0.075 ppm (73 FR 16436, March 27, 2008), and the 2015 ozone NAAQS was set at a level of 0.070 ppm (80 FR 65291, October 26, 2015).

Clean Air Act (CAA or the Act) section 181(b)(2) to determine whether areas with attainment dates in 2021 attained the relevant standards by their applicable attainment dates. These proposed determinations were based on complete, quality-assured and certified ozone air quality monitoring data for the 2018-2020 calendar years, and based on the exclusion of certain exceedances of the 2008 and 2015 ozone NAAQS that occurred on multiple days in 2018 and 2020, because the exceedances were due to exceptional events.

Specifically, we proposed to determine that the Ventura County and the Nevada County (Western part) (or “Western Nevada County”) areas attained the 2008 ozone NAAQS by the Serious area attainment date of July 20, 2021, and that the Butte County, Calaveras County, San Luis Obispo (Eastern part) (or “Eastern San Luis Obispo”), Sutter Buttes, Tuloumne County, and Tuscan Buttes areas attained the 2015 ozone NAAQS by the Marginal area attainment date of August 3, 2021. A summary of the actions proposed for the two areas classified Serious for the 2008 ozone NAAQS is provided in Table 1 of this document, and a summary of the actions proposed for the six areas classified Marginal for the 2015 ozone NAAQS is provided in Table 2 of this document.

**Table 1 — 2008 Ozone NAAQS Serious Nonattainment Area Action Summary<sup>a</sup>**

<b>2008 NAAQS Nonattainment Area</b>	<b>2018-2020 Design value (ppm)</b>	<b>2008 NAAQS attained by the Serious attainment date?</b>
Nevada County (Western part)	0.075	Attained
Ventura County	0.075	Attained

<sup>a</sup> The data shown exclude exceedances due to exceptional events.

**Table 2 — 2015 Ozone NAAQS Marginal Nonattainment Area Action Summary<sup>a</sup>**

<b>2015 NAAQS Nonattainment Area</b>	<b>2018-2020 Design value (ppm)</b>	<b>2015 NAAQS attained by the Marginal attainment date?</b>
Butte County	0.070 <sup>b</sup>	Attained
Calaveras County	0.069	Attained
San Luis Obispo (Eastern part)	0.070	Attained
Sutter Buttes	0.070	Attained

Tuolumne County	0.070	Attained
Tuscan Buttes	0.070	Attained

<sup>a</sup> The data shown exclude exceedances due to exceptional events.

<sup>b</sup> The average percent completeness for one of the monitors in Butte County, located in Paradise, CA, is 88 percent due to a power loss caused by regional California wildfires. Per 40 CFR part 50, appendix U, 4(c) the California Air Resources Board (CARB) submitted a request to the Regional Administrator for Region 9 to count missing data for 79 days between November 8, 2018, and January 25, 2019, towards the minimum data completeness requirements. This request was approved and results in data completeness over 90 percent on average over the three-year period of 2018-2020 for the site; therefore, this design value is considered valid. For more information regarding the Paradise monitor data certification and the state's request, see the Technical Support Document for the proposed action and data certification letters included in the docket.

In our proposed rule, we also proposed to determine that, if the proposed determinations of attainment by the attainment date were finalized for the Ventura County and Western Nevada County nonattainment areas, then the requirement for the State to have contingency measures for failure to meet RFP and failure to attain for the 2008 ozone NAAQS would no longer apply, because contingency measures would never be needed given the attainment of the NAAQS by the attainment date (see section II.D of the proposed rule).

Our proposed rule includes additional information about ozone air pollution, the NAAQS, and the statutory and regulatory bases for making these proposed determinations of attainment. Our proposed rule and the Technical Support Document (TSD) accompanying the proposed rule also include additional information about the relevant nonattainment areas, information about areas of Indian Country within the nonattainment areas, and additional information about the data considered for this action.

## **II. Public Comment Period and Final Action**

The public comment period for the EPA's July 14, 2022 proposal closed on August 15, 2022. We received no comments on our proposal.

Pursuant to section 181(b)(2)(A) of the CAA and 40 CFR 51.1303, the EPA is making final determinations that the Serious nonattainment areas listed in Table 1 attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2021, and the Marginal nonattainment areas listed in Table 2 attained the 2015 ozone NAAQS by the applicable attainment date of August 3, 2021. Once effective, this final action satisfies the EPA's obligation

pursuant to CAA section 181(b)(2)(A) to determine, based on an area's air quality as of the attainment date, whether the area attained the standard by the applicable attainment date. This determination also establishes that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by the applicable attainment date.

The EPA is also making a final determination that the requirement for the Western Nevada County and Ventura nonattainment areas to have contingency measures for failure to meet RFP and failure to attain the 2008 ozone NAAQS by the attainment date no longer applies, because contingency measures can never be triggered given the attainment of the NAAQS by the attainment date. This finding will not prevent the EPA, in the event that an area subsequently violates the NAAQS, from exercising its authority under the CAA to address violations of the NAAQS.<sup>3</sup> Our proposed rule has more information about the EPA's rationale for these actions.

These determinations of attainment do not constitute a redesignation to attainment under CAA section 107(d)(3). The EPA may redesignate an area if a state meets additional statutory criteria, including the EPA approval of a state plan demonstrating maintenance of the air quality standard for 10 years after redesignation, as required under CAA section 175A. As for all NAAQS, the EPA is committed to working with states that choose to submit redesignation requests for areas that are attaining the 2008 and 2015 ozone NAAQS.

### **III. Summary of Final Action**

For the reasons set forth in our proposed rule and summarized in this document, we are determining that:

- The Ventura County and Western Nevada County nonattainment areas attained the 2008 ozone NAAQS by the July 20, 2021 attainment date;

---

<sup>3</sup> See *Bahr v Regan*, 6 F.4th 1059, 1085 (9<sup>th</sup> Cir. 2021); see also 42 U.S.C. 7407(d)(3).

- The Butte County, Calaveras County, Eastern San Luis Obispo County, Sutter Buttes, Tuolumne County, and Tuscan Buttes nonattainment areas attained the 2015 ozone NAAQS by the August 3, 2021 attainment date; and
- The CAA requirement for the SIP to provide for contingency measures for attainment and RFP will no longer apply to the Ventura County and Western Nevada County nonattainment areas for the 2008 ozone NAAQS.

As noted in section II of this document, we are not taking action to redesignate any area to attainment. The EPA would consider a redesignation to attainment for these areas following a submittal by the State of a formal redesignation request and maintenance plan.

#### **IV. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive orders can be found at <https://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

*A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This rule does not impose any new information collection burden under the PRA not already approved by the OMB.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments, or the private sector.

*E. Executive Order 13132, Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, tribes, or the relationship between the National Government and the states and tribes, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175, Coordination with Indian Tribal Governments*

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” is defined in the Executive order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes.”

The EPA has identified tribal areas within three of the nonattainment areas covered by this action, that would be potentially affected by this action. Specifically, the Butte County, Calaveras County, and Tuolumne County nonattainment areas addressed in this action include areas of Indian country located within the nonattainment area boundaries. A full list of tribes in these nonattainment areas is found in section I.D of the proposed action and in the TSD accompanying the proposed action.

The EPA has concluded that this action may have tribal implications for these tribes for the purposes of Executive Order 13175, but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. The determinations we are finalizing in this rule apply

throughout the nonattainment area, including on tribal lands within the nonattainment areas. As noted in our proposed rule, and in section II of this document, the nonattainment areas, including the tribal lands within the nonattainment areas, will remain designated nonattainment and will retain their existing classifications.

At the time of our proposed action, the EPA notified the tribes located within the boundaries of the nonattainment areas addressed in this action, and we plan to notify them of this final action. Because this action did not change the tribe's existing nonattainment designation or classification, we did not offer government-to-government consultation on our proposed action, however, as stated in our proposed action, the EPA would initiate government-to-government consultation at the request of any tribe. The EPA did not receive any requests for consultation on this action.

*G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

*H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

This rulemaking does not involve technical standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population*



CAA 181(b)(2)(A) directs the Administrator to determine, within 6 months following the applicable attainment date, and based on the area's design value as of the attainment date, whether the area attained the standard by that date. There is no information in the record indicating that this action would be inconsistent with the stated goals of Executive Order 12898 of achieving environmental justice for people of color, low-income populations, and indigenous peoples.

*K. Congressional Review Act (CRA)*

This rule is exempt from the CRA because it is a rule of particular applicability. The rule makes factual determinations for specific entities and does not directly regulate any entities. The determination of attainment by the attainment date does not in itself create any new requirements beyond what is mandated by the CAA.

*L. Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the *Federal Register*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Administrative practice and procedure, Air pollution control, Designations and classifications, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: October 6, 2022.

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

For the reasons stated in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart F—California**

2. Section 52.282 is amended by adding paragraph (n) to read as follows:

#### **§ 52.282 Control strategy and regulations: Ozone.**

\* \* \* \* \*

(n) *Determinations of attainment by the attainment date.* Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

(1) *Determinations of attainment by the attainment date.* The EPA has determined that the Nevada County (Western part) and Ventura County Serious nonattainment areas in California attained the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of July 20, 2021, based upon complete, quality-assured and certified data for the calendar years 2018-2020.

(2) *Determinations of attainment by the attainment date.* The EPA has determined that the Butte County, Calaveras County, San Luis Obispo (Eastern part), Sutter Buttes, Tuolumne County, and Tuscan Buttes Marginal nonattainment areas in California attained the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of August 3, 2021, based upon complete, quality-assured and certified data for the calendar years 2018-2020.